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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 473

JACK AKERS, and CLARA M. AKERS, a partnership, doing business in the form and name of AKERS CLEANERS,

Petitioner,

v.

HAROLD HANDLEY, Governor of the State of Indiana, et al.,

Respondents.

ON APPEAL FROM THE SUPREME COURT OF INDIANA

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Jack Akers and Clara M. Akers, a partnership, doing business as Akers Cleaners, respectfully prays that a writ of certiorari be issued out of and under the seal of this Court to review the decision of the Supreme

Court of Indiana, rendered on April 24, 1958, which affirmed a judgment of the Marion Circuit Court of Indiana, denying the plaintiff's petition for a temporary injunction.

Jurisdiction

Jurisdiction to review this case upon writ of certiorari is conferred upon this Court by 28 U.S.C. Sec. 1257(3).

Opinions Below

The opinion of the Marion Circuit Court of Indiana is not reported.

The opinion of the Supreme Court of Indiana, filed April 24, 1958 (Rehearing denied without opinion, June 2, 1958), is reported in 149 N. E. 2d 692, and printed in the Appendix.

Questions Presented

Only one primary question is presented for review: Do the withholding provisions of the Indiana Gross Income Tax Act (Acts 1957, Ch. 302, Sec. 1, p. 822, being Sec. 64-2617, Burns' Statutes, 1951 Replacement (cum. Supp.)), violate the provisions of the Thirteenth Amendment to the Constitution of the United States, in imposing the duties upon the partners, as employers, to compute, deduct, and collect the amount of Gross Income Tax determined to be due from each employee, by withholding it from his pay and remit it to the Gross Income Tax Division, as constituting involuntary servitude? Subsidiary questions arise out of the court's opinion: 1. Does the Thirteenth Amendment apply only "to 'personal servitude' or any kind of slavery," or to any compelled and unwilling service imposed by statute or by judicial order?

2. Does the State acting in its "sovereign capacity" have the power as here to require "the performance of certain services" of citizens "for the State as a public duty," apart from military duty, jury duty, road building and the like, despite the prohibition of the Thirteenth Amendment? Therefore, does the court's ruling deny the plaintiff the protection of the Thirteenth Amendment and of Sec. 37, Article I of the Indiana Constitution?

Statute Involved

Thirteenth Amendment, Sec. 1, of the United States Constitution:

> "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted shall exist within the United States or any place subject to their jurisdiction."

Statement of the Case

The plaintiff, Jack Akers and Clara M. Akers, a partnership, d/b/a Akers Cleaners, is engaged in a cleaning and pressing business, in the City of Beech Grove, in Marion County, Indiana, employing five persons, besides the partners. The plaintiff came into Marion Circuit Court and petitioned for a temporary injunction against the defendants, to enjoin the defendants from enforcing Acts 1957, Ch. 302, Sec. 1, p. 822, being Sec. 64-2617, Burns' Statutes, 1951 Replacement (cum. Supp.), which requires the plaintiff to spend considerable time, serving as tax collector, by computing and collecting the amount of Gross Income Tax determined to be due from each of their employees, by withholding it from their pay, which requirement of service constitutes involuntary servitude, as the employers have no choice but to perform such service,

because failure to perform, is subject to fine and imprisonment, all of which the plaintiff claims is the imposition of compulsory service, constituting involuntary servitude. Said denial of injunctive relief permits the defendants to impose involuntary servitude upon the plaintiff, which is not permissible under the Thirteenth Amendment.

Specification of Errors to be Urged

The Supreme Court of Indiana erred in affirming the judgment of the Marion Circuit Court, which denied the plaintiff's petition for a temporary injunction against the enforcement by the defendants of the Acts 1957, Ch. 302, Sec. 1, p. 822, being Sec. 64-2617, Burns' Statutes, 1951 Replacement (cum. Supp.), because said Act imposes upon the plaintiff and other employers the requirement to serve as a tax collector, computing and collecting the amount of tax determined by the plaintiff to be due from each employee, withholding it from their pay, and paying it to the State, which constitutes involuntary servitude, being a service the employer is compelled to perform unwillingly, under penalty of imprisonment and fine, in violation of the Thirteenth Amendment.

Basis of Federal Jurisdiction

This is a question involving a conflict between the State statute and the Thirteenth Amendment of the United States Constitution, as to whether the duties imposed by the State statute constitute involuntary servitude, and was raised in the petition for injunction, filed by the plaintiff, alleging in rhetorical paragraph 8, that:

> "Said Withholding Act is compelling the plaintiff to perform said services, without the consent of the

partners, imposes involuntary servitude and is unconstitutional, — being — in violation of the 13th Amendment, Section 1, . . . of the United States."

The Judge of the Marion Circuit Court denied the petition for injunction and stated in his finding and decree:

> "The Court further finds that this Act is well within the Constitution of the State of Indiana and of the United States for the following reasons: . . . ."

It was again raised by motion for new trial, and upon the motion being overruled, by filing an assignment of errors, alleging: 1. the Court erred in denying the plaintiff's petition for a temporary injunction; and 2. the Court erred in overruling the plaintiff's motion for a new trial.

The Supreme Court of Indiana in its opinion (Appendix) stated that there was only one question presented, "Do the withholding provisions of the Act violate the provisions of the Thirteenth Amendment to the Constitution of the United States, ..."

Reasons Relied on for Granting the Writ

This is an important question concerning the application of the Thirteenth Amendment. Does the State Act (Acts 1957, Ch. 302, Sec. 1, p. 822, being Sec. 64-2617, Burns' Statutes, 1951 Replacement (cum. Supp.) impose involuntary servitude, in requiring the employers of four or more employees to compute the amount of Gross Income Tax due to the State from the employees, deduct it from their wages and prepare reports, and turn it over to the Indiana Gross Income Tax Division? This question has never been before the Supreme Court of the United

States, nor before any other courts, so far as we can find. It is very vital to determine whether the Thirteenth Amendment means that compelled services are forbidden.

The Thirteenth Amendment forbids the imposition of all involuntary servitude except as a punishment for a crime of which the party has been duly convicted. The Supreme Court of Indiana held that this applied only to personal slavery, but the language of the Amendment clearly contemplates involuntary servitude other than slavery, for a man convicted of a crime is not thereby made a slave but becomes a man under confinement, but with rights, to be free from "cruel and unusual punishment," while a slave was not so protected, but lacked any legal rights. If it referred only to slavery, it would not need mention involuntary servitude.

The courts have virtually unanimously held that to compel workers to go back and resume their employment tasks, when on strike, would be to impose involuntary servitude, yet such employment duties are not personal slavery, or any kind of slavery or peonage. They would be working unwillingly at their tasks as before, under an order they could not disobey. *Henderson v. Coleman* (1942), 150 Fla. 185, 7 So. 2d 117, 121; *General Electric Co. v. International Union, UAW* (1952), 93 Ohio App. 139, 108 N. E. 2d 211, 222. Plainly the view of the courts has been that any compelled service, that is any reluctant, unfree service is involuntary servitude. *Walker v. Chief Quarantine Officer* (1943), 69 F. Supp. 980, 983-4.

The Court relied on *Crews v. Lundquist* (1935), 361 Ill. 193, 197 N. E. 768, 772, where the Illinois Legislature had required public administrators, who are public officials, to

administer war veterans' estates without compensation The question of it being involuntary servitude was raised, but the Illinois Supreme Court said that it was not in conflict with the Thirteenth Amendment, because the state official could quit his job at any time he believed he was not sufficiently compensated. The Court also relied heavily upon *State ex rel. Aft v. State Comm. of Revenue and Taxation* (1947), 163 Kan. 240, 181 P. 2d 532, 541, where the Kansas Supreme Court held that a statute requiring vendors of motor fuel to collect fuel taxes without compensation was not imposing involuntary servitude. There we have the requirement that the vendor collect the tax on a sale, a method of collecting taxes antedating the Constitution by centuries. However, it is all part of one transaction, and if the vendor doesn't collect it, no one else can in the case of perishable or consumable articles.

The collection of the Gross Income Tax is a separate transaction, for it is not a tax upon the transaction of employment, which might be likened to a sale of labor. By no stretch of imagination could this proceeding be called a tax on the sale of labor, but is a tax upon the employee's income. Moreover, the State is not dependent upon such collection methods. This method allegedly is more efficient. Consequently, these sales and use tax cases are not applicable, as not involving the same issue. Moreover, in this Kansas case, the question of compensation for the service was the prime issue, while in our case the question is one of compelled service, whether compensated or not. Similarly, in the *Lundquist* case, the question arose because the State denied compensation to the public administrators, and not because it required the performance of this service.

It is respectfully submitted that there is here presented a proper occasion for the exercise of the supervisory power of this Court.

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September 26, 1958.

Certificate of Service

I, Gustav H. Dongus (below signed), one of the attorneys for Akers Cleaners, petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certifies that on the 26th day of September, 1958, I served a copy of the foregoing Petition for Writ of Certiorari on the defendants, by having delivered in person a copy of the foregoing Petition, at the office of the Attorney General of Indiana, State House, Indianapolis, Indiana.

GUSTAV H. DONGUS,

APPENDIX

In The

Supreme Court of Indiana

Jack Akers and Clara M. Akers, a partnership, doing business in the form and name of Akers Cleaners, *Appellants,* v. Harold Handley, Governor of the State of Indiana; Adolph Fossler, Treasurer of the State of Indiana; Roy T. Combs, Auditor of the State of Indiana, all as Members of the Indiana Revenue Board; Edwin W. Beaman, Commissioner of Revenue, *Appellees.*	No. 29,573

Appeal from the Marion Circuit Court,
Hon. John L. Niblack, Judge

Bobbitt, J. This case arises out of a suit for injunction, instituted by appellants, who employ five persons in the operation of their business, to prevent the enforcement of the withholding provisions of the Gross Income Tax Act.[1]

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[1] Acts 1957, ch. 302, § 1, p. 822, being § 64-2617, Burns' 1951 Replacement (Cum. Supp.).

Appellants' petition for a temporary injunction was denied and this appeal followed.

Only one question is presented: Do the withholding provisions of the Act violate the provisions of the Thirteenth Amendment to the Constitution of the United States, and Article 1, § 37 of the Constitution of Indiana[2] because they compel appellants to perform involuntary services for the State? No other question was discussed by appellants in oral argument or in the argument section of their brief, hence other questions raised by the motion for a new trial are waived.

The language of the Thirteenth Amendment, *supra*, stems from the ordinance of 1787[3] and it was first construed in *Slaughter-House Cases* (1873), 16 Wall. 36, 21 L. ed. 394.

The term "servitude" as it appears in the Thirteenth Amendment means a "personal servitude," and its purpose was to forbid all conditions of any kind of *personal* slavery.

Slaughter-House Cases, supra (1873), 16 Wall. 36, 69, 72, 21 L. ed. 394; 406, 407;

Butler v. Perry (1916), 240 U. S. 328, 60 L. ed. 672, 36 S. Ct. 258.

Section 37 of Article 1 of the Constitution of Indiana was adopted for the same purpose and under the same conditions, relative to slavery and involuntary servitude, as was the ordinance of 1787. This being true, it would seem to follow that the word "servitude" as it appears in § 37, *supra*, also was intended to apply to "personal servitude" or any kind of personal slavery.

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[2] Article 1, § 37 of the Constitution of Indiana provides, as does the Thirteenth Amendment of the Federal Constitution, that neither slavery nor involuntary servitude shall be permitted except as punishment of crimes whereof the party shall have been duly convicted.

[3] *Bailey v. Alabama* (1911), 219 U. S. 219, 240, 55 L. ed. 191, 31 S. Ct. 145.

No case arising in the Northwest Territory or under the Thirteenth Amendment has ever held, "that services which the individual is by statute required to give to the state, either in his personal or official capacity, such as services in the army, militia, jury service, road building, and the like, come within the language of the Thirteenth Amendment."

Crews v. Lundquist (1935), 361 Ill. 193, 201, 197 N. E. 768, 772.

Nor do we believe that Article 1, § 37 of the Constitution of Indiana prohibits these or like services when required by the Sate in its sovereign capacity.

In *Crews v. Lundquist, supra,* the Supreme Court of Illinois held that a statute which compelled public administrators to administer war veterans' estates without compensation, in certain cases, was not in conflict with the Thirteenth Amendment.

In *State ex rel. Arn v. State Comm. of Revenue and Taxation* (1947), 163 Kan. 240, 250, 181 P. 2d 532, the Supreme Court of Kansas held that a statute requiring vendors of motor fuel to collect motor fuel taxes without compensation, was not in violation of § 6 of the Kansas Bill of Rights, which is similar to § 37 of Article 1 of our Constitution. If a statute compelling the collection of motor fuel tax is not in violation of the Constitutional prohibition against slavery and involuntary servitude, then it would seem logically to follow that a statute compelling the collection or withholding of gross income tax by employers would not violate such provision.

The burden imposed upon appellants by the Act here in question is not one of personal servitude, but rather one requiring of them ~~and other persons~~ similarly situated, the performance of certain services for the State as a public duty, in order to make the collection of the tax more uniform and thus render our State Government more effective in its efforts to avoid discrimination in the collection of gross income taxes. While not similar, yet it

may be said to be in the nature of jury or military service as opposed to personal servitude.

In our opinion the withholding provisions of ch. 302 of the Acts of 1957 do not contravene any of the provisions of the Thirteenth Amendment to the Constitution of the United States or of Article 1, § 37 of the Constitution of Indiana.

Appellants have failed to sustain their burden of showing the invalidity of the statute here in question, and the judgment of the trial court must be affirmed.[4]

Judgment affirmed.

EMMERT, C. J., LANDIS, ACHOR and ARTERBURN, JJ., concur.

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[4] Statutes involving various other taxes which require withholding or collection of tax due from others have been upheld in many States and by the United States Supreme Court. See: *Rinn v. Bedford* (1938), 102 Colo. 475, 84 P. 2d 827; *Bedford v. Colorado Bank* (1939), 104 Colo. 311, 91 P. 2d 469 (affirmed (1940), 310 U. S. 41, 84 L. ed. 1067, 60 S. Ct. 298); *Johnson v. Diefendorf* (1936), 56 Ida. 620, 57 P. 2d 1068; *Morrow v. Henneford* (1935), 182 Wash. 625, 47 P. 2d 1016; *Wiseman v. Phillips* (1935), 191 Ark. 63, 84 S. W. 2d 91; *Blauner's Inc. v. Philadelphia* (1938), 330 Pa. 342, 198 Atl. 889; *State ex rel. Rice v. Allen* (1938), 180 Miss. 659, 177 So. 763; *Heriot v. City of Pensacola* (1933), 108 Fla. 480, 489, 146 So. 654, 657; *Texas Co. v. State* (1922), 31 Ariz. 485, 254 Pac. 1060, 53 A. L. R. 258; *Monamotor Oil Co. v. Johnson* (1934), 292 U. S. 86, 93, 94, 78 L. ed. 1141, 54 S. Ct. 575; *Rainier Nat. Park Co. v. Martin* (1937), W. D. Wash., 18 F. Supp. 481, 488 (affirmed (1938) 302 U. S. 661, 82 L. ed. 511, 58 S. Ct. 478); *Allen v. Regents* (1938), 304 U. S. 439, 82 L. ed. 1448, 58 S. Ct. 980; *Howes Bros. Co. v. Unemployment Comp. Comm.* (1936), 296 Mass. 275, 5 N. E. 2d 720; *Gillum v. Johnson* (1936), 7 Cal. 2d 744, 62 P. 2d 1027, 108 A. L. R. 595; *Beeland Wholesale Co. v. Kaufman* (1937), 234 Ala. 249, 174 So. 516; *Helvering v. Davis* (1937), 301 U. S. 619, 81 L. ed. 1307, 57 S. Ct. 904, 109 A. L. R. 319.